

BEFORE THE REAL ESTATE COMMISSION

FILED

STATE OF NEVADA

FEB 08 2017

SHARATH CHANDRA, Administrator,
REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS &
INDUSTRY, STATE OF NEVADA,

Case No.: 2016-1936

REAL ESTATE COMMISSION
Ruben A. ...

Petitioner,

vs.

COMPLAINT AND NOTICE OF
HEARING

R. JEFFREY LOWDEN,

Respondent.

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Peter K. Keegan, Deputy Attorney General, hereby notifies RESPONDENT GARRETT LEPIRE ("RESPONDENT") of an administrative hearing before the STATE OF NEVADA REAL ESTATE COMMISSION ("Commission"). The hearing will be held pursuant to Chapter 233B and Chapter 645 of the Nevada Revised Statutes ("NRS") and Chapter 645 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if the RESPONDENT should be subject to an administrative penalty as set forth in NRS 645.633 and/or NRS 645.630 and/or NAC 645.605 and/or NRS 645.358 and/or NRS 622.400, and the discipline to be imposed, if violations of law are proven.

JURISDICTION

RESPONDENT was at all relevant times mentioned in this Complaint licensed as a Broker, License Number B.10062387.CORP, and as a Property Manager, License Number PM.0165611.BKR, and is therefore subject to the jurisdiction of the Division and the provisions of NRS Chapter 645 and NAC Chapter 645.

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FACTUAL ALLEGATIONS

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2 1. RESPONDENT has been licensed as a Broker, License Number
3 B.10062387.CORP, since August 16, 2004, and is currently in active status. RESPONDENT
4 has been licensed as a Property Manager, License Number PM.0165611.BKR, since
5 January 24, 2013, and is currently in active status.

6 2. RESPONDENT's currently employed with Sky West Real Estate Services,
7 Inc., in Reno, Nevada. RESPONDENT is the principal broker and president of Sky West
8 Real Estate Services, Inc. ("Sky West").

9 3. On or about April 11, 2016, the Division received a Complaint from Evelyn
10 Palmer ("COMPLAINANT") against the RESPONDENT claiming that he had advertised
11 her property, located at 1210 & 1212 West First Street, Reno, Nevada 89503 (the
12 "Property"), for sale outside of the specified time in the parties' Exclusive Representation
13 Agreement.

14 4. On or about May 17, 2016, the Division sent RESPONDENT, via email, an
15 Opening Letter indicating that an investigation had commenced concerning the April 11,
16 2016, Complaint and informed RESPONDENT that a response was due to the Division by
17 May 9, 2016.

18 5. On or about May 17, 2016, RESPONDENT informed the Division via email
19 that a response would be forthcoming "within the next day or two."

20 6. On or about June 22, 2016, the Division sent RESPONDENT a follow-up email
21 regarding his response to the Opening Letter.

22 7. On or about June 22, 2016, RESPONDENT informed the Division that he was
23 represented by Counsel, Sean L. Brohawn.

24 8. On or about July 18, 2016, RESPONDENT submitted his response
25 Declaration and supporting exhibits via email to the Division.

26 9. In paragraph 10 of RESPONDENT's July 18, 2016, Declaration, he declared
27 that "[w]e did not perform property management services for Ms. Palmer."

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1 10. On or about July 3, 2013, RESPONDENT executed an agreement with
2 COMPLAINANT which sets forth rental services provided by Sky West for the Property,
3 as well as payment terms therefore, but claims that Sky West is not currently the property
4 manager.

5 11. On or about December 5, 2014, COMPLAINANT entered into a Property
6 Management Agreement with Sky West Real Estate Services for her Property exclusive for
7 a period of 12 months. The December 5, 2014, Property Management Agreement was
8 executed by Scott MacKenzie, an Agent of Sky West.

9 12. In paragraph 14 of RESPONDENT's Declaration, he declared that "[w]e did
10 not offer to sell COMPLAINANT's property for sale without authorization."

11 13. On or about September 3, 2014, COMPLAINANT entered into an Exclusive
12 Representation Agreement with Sky West Real Estate Services, to market her Property for
13 a period of 45 days. The Exclusive Representation Agreement was executed by Scott
14 MacKenzie, an Agent of Sky West, but was not executed by RESPONDENT, the
15 supervising Broker.

16 14. The September 3, 2014, Exclusive Representation Agreement terminated on
17 October 17, 2014.

18 15. On or about April 6, 2016, the website for Sky West did contain a sale listing
19 for the Property reflecting Scott MacKenzie as the listing agent.

20 16. On or about November 22, 2016, the Division sent RESPONDENT a Notice of
21 Violation, via certified mail, care of his attorney, Sean L. Brohawn, which was returned for
22 incorrect address.

23 17. The November 22, 2016, Notice of Violation ordered RESPONDENT, pursuant
24 to NAC 645.695, to pay an administrative fine of \$1,000.00 to the Division for violations of
25 NRS 645 and NAC 645.

26 18. The November 22, 2016, Notice of Violation was forwarded to
27 RESPONDENT's attorney's correct address on November 30, 2016.

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20. On or about December 28, 2016, the Division sent RESPONDENT, via certified mail, an NRS 233B notice of intention to commence disciplinary action against him by filing a complaint and request for hearing with the Nevada Real Estate Commission for violations of NRS 645.635(1) pursuant to NRS 645.630 and NRS 645.633(1)(h) pursuant to NAC 645.605(7).

VIOLATIONS

RESPONDENT has committed the following violations of law:

21. RESPONDENT violated NRS 645.630 pursuant to NRS 645.635(1) by offering COMPLAINANT's Property for sale on the Sky West website after the expiration of the September 3, 2014, Exclusive Representation Agreement, and without the knowledge of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.

22. RESPONDENT violated NRS 645.633(1)(h) pursuant to NAC 645.605(7) and NRS 645.320 by failing to ensure that his signature, as the Broker, was included on the September 3, 2014 Exclusive Representation Agreement wherein an agent of Sky West was the listing agent.

23. RESPONDENT violated NRS 645.630(1)(a) by materially misrepresenting Sky West's property management relationship with the COMPLAINANT in his July 18, 2016, Declaration responding to the Division's investigative staff.

DISCIPLINE AUTHORIZED

24. Pursuant to NRS 645.630 and NRS 645.633, the Commission is authorized to impose an administrative fine of up to \$10,000.00 per violation against RESPONDENT and further to suspend, revoke or place conditions on the license of RESPONDENT.

25. Additionally, under NRS Chapter 622, the Commission is authorized to impose costs of the proceeding upon RESPONDENT, including investigative costs and attorney's fees, if the Commission otherwise imposes discipline on RESPONDENT.

1 26. Therefore, the Division requests that the Commission take such disciplinary
2 action as it deems appropriate under the circumstances.

3 **NOTICE OF HEARING**

4 **PLEASE TAKE NOTICE** that a disciplinary hearing has been set to consider the
5 Administrative Complaint against the above-named RESPONDENT in accordance with
6 Chapters 233B and 645 of the Nevada Revised Statutes and Chapter 645 of the Nevada
7 Administrative Code.

8 **THE HEARING WILL TAKE PLACE** on March 14, 2017, commencing at 9:00
9 a.m., or as soon thereafter as the Commission is able to hear the matter, and each
10 day thereafter commencing at 9:00 a.m. through March 16, 2017, or earlier if the
11 business of the Commission is concluded. The Commission meeting will be held
12 on March 14, 2017, at the Gaming Control Board, 1919 College Parkway, Carson
13 City, Nevada 89701. The meeting will continue on March 15, 2017 at the Gaming
14 Control Board, 1919 College Parkway, Carson City, Nevada 89701, commencing
15 at 9:00 a.m., and on March 16, 2017, should business not be concluded, starting at
16 9:00 a.m. at the Nevada Division of Insurance, 1818 East College Parkway,
17 Suite 103, Carson City, Nevada 89706.

18 **STACKED CALENDAR:** Your hearing is one of several hearings scheduled
19 at the same time as part of a regular meeting of the Commission that is expected
20 to last from March 14th through March 16, 2017, or earlier if the business of the
21 Commission is concluded. Thus, your hearing may be continued until later in the
22 day or from day to day. It is your responsibility to be present when your case is
23 called. If you are not present when your hearing is called, a default may be
24 entered against you and the Commission may decide the case as if all allegations
25 in the Complaint were true. If you have any questions please call Rebecca
26 Hardin, Commission Coordinator, at (702) 486-4074.

27 **YOUR RIGHTS AT THE HEARING:** except as mentioned below, the hearing is an
28 open meeting under Nevada's Open Meeting Law, and may be attended by the public. After

1 the evidence and arguments, the Commission may conduct a closed meeting to discuss your
2 alleged misconduct or professional competence. A verbatim record will be made by a
3 certified court reporter. You are entitled to a copy of the transcript of the open and closed
4 portions of the meeting, although you must pay for the transcription.

5 As the RESPONDENT, you are specifically informed that you have the right to
6 appear and be heard in your defense, either personally or through your counsel of choice.
7 At the hearing, the Division has the burden of proving the allegations in the Complaint and
8 will call witnesses and present evidence against you. You have the right to respond and to
9 present relevant evidence and argument on all issues involved. You have the right to call
10 and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any
11 matter relevant to the issues involved.

12 You have the right to request that the Commission issue subpoenas to compel
13 witnesses to testify and/or evidence to be offered on your behalf. In making the request,
14 you may be required to demonstrate the relevance of the witnesses' testimony and/or
15 evidence. Other important rights you have are listed in NRS 645.680 through 645.990,
16 NRS Chapter 233B, and NAC 645.810 through 645.920.

17 The purpose of the hearing is to determine if the RESPONDENT has violated NRS
18 645 and/or NAC 645 and if the allegations contained herein are substantially proven
19 by the evidence presented and to further determine what administrative penalty, if any, is
20 to be assessed against the RESPONDENT, pursuant to NRS, 645.633 and/or 645.630 and/or
21 NAC 645.695.

22 DATED this 7 day of February, 2017.

23 State of Nevada
24 Department of Business and Industry
25 Real Estate Division

26 By: 
27 SHARATH CHANDRA, Administrator
28 2501 East Sahara Avenue
Las Vegas, Nevada 89104-4137
Telephone: (702) 486-4033

1 DATED this 6th day of February, 2017.

2 ADAM PAUL LAXALT
3 Attorney General

4 By: 

5 PETER K. KEEGAN
6 Deputy Attorney General
7 100 North Carson Street
8 Carson City, Nevada 89701
9 Telephone: (775) 684-1153
10 *Attorneys for Real Estate Division*

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